84-1473

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No. _____

IN THE

Supreme Court of the United States

October Term, 1984

WILLIAM C. HOFFMAN,

Petitioner,

vs.

DAVID S. HENDERSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

WILLIAM C. HOFFMAN
P. O. Box B
Lake Elmo, Minnesota 55042
(612) 770-6582
Petitioner

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QUESTIONS PRESENTED

1. Under the Contract Clause of Article I, Section 10, and the Due Process Clause of the Fourteenth Amendment, are the two retainer agreements between the Petitioner and the Respondent Minnesota Contracts which are goverened by Minnesota Contract Law?

2. Is the decision of the Minnesota Supreme Court arbitrary or fundamentally unfair, and does it frustrate the reasonable expectations of the Petitioner and the Respondent?

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WILLIAM C. HOFFMAN,

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DAVID S. HENDERSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

The Petitioner, William C. Hoffman, respectfully requests that a Writ of Certiorari be issued to review the Order of the Minnesota Supreme Court which denied the Petitioner's Petition For Further Review thereby making the judgment in this case final in the Minnesota State Courts.

OPINIONS BELOW

The Minnesota District Court's Order and Memorandum, both unpublished, appear in the Appendix. The Minnesota Court of Appeals Opinion is officially reported in 355 N.W.2d. 322 (Minn. App. 1984), and the Order of the Minnesota Supreme Court is unpublished and appears in the Appendix.

JURISDICTION

The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C., Section 1257 (3). The Order of the Minnesota Supreme Court, dated and entered on December 20, 1984, denied the Petitioner's Petition For Further Review, and it is a final decree, and it has been rendered by the highest Court of the State of Minnesota. The Petitioner, at all times in this case, has specially claimed various rights, privileges, and immunities under Article I, Section 10, Clause 1, and the Fourteenth Amendment, Section 1, of the United States Constitution in that he claims that his right to make contracts and his right to due process have been denied. In accordance with 28 U.S.C., Section 2101 (c), this Petition for a Writ of Certiorari is being filed within 90 days after the entry of the Minnesota Supreme Court's Order.

CONSTITUTIONAL PROVISIONS

U.S.C.; Constitution; Article I, Section 10, Clause 1.

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

U.S.C.; Constitution; Article XIV, Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Both the Petitioner and the Respondent have been domiciled in the State of Minnesota their entire lives.

On February 7, 1977, the Respondent was injured while working in the State of Alaska. He returned to Minnesota two days later and there procured medical care and treatment for himself. He has continued to live in the State of Minnesota since that time.

On July 13, 1978, the Respondent hired the Petitioner, a Minnesota attorney, to represent him with regard to his Alaskan workmen's compensation claim. On that date, in the Petitioner's office in the State of Minnesota, the Respondent signed a retainer agreement which provided that all compensation recovered as a result of the Petitioner's efforts would be divided 3/4 to the Respondent and 1/4 to the Petitioner. (A-12).

In February of 1979, the compensation insurer stopped paying compensation to the Respondent. On February 20, 1979, in the Petitioner's office in the State of Minnesota, the Respondent signed a supplement to the retainer agreement of July 13, 1978. The supplement provided that all future compensation recovered would be divided 3/4 to the Respondent and 1/4 to the Petitioner. (A-12).

The Petitioner prepared the Respondent's case in the State of Minnesota. He reviewed the Respondent's medical

records, had the Respondent examined by an Orthopedic Surgeon in Minneapolis, Minnesota, had the Respondent contact the Department of Vocational Rehabilitation of the State of Minnesota, and took the depositions of the Orthopedic Surgeon, a vocational rehabilitation counsellor of the State of Minnesota, and three medical records librarians from hospitals located in Minnesota.

On July 30, 1979, a hearing of approximately one hour was held in Anchorage, Alaska, but the retainer agreements were not made a part of the hearing and the Alaskan Workmen's Compensation Board never had jurisdiction over the agreements nor over the Petitioner.

On November 28, 1979, the Alaskan Workmen's Compensation Board issued a Decision and Order which set out certain fees for the Petitioner. Nevertheless, until June 24, 1980, the Respondent voluntarily paid 1/4 of the recovered compensation to the Petitioner in accordance with the terms of the two retainer agreements that the Respondent had signed on July 13, 1978 and February 20, 1979. After June 24, 1980, the Respondent refused to pay the Petitioner any portion of the continuing compensation, so the Petitioner sued the Respondent in the District Court of the State of Minnesota for recovery of the fees set out in the two retainer agreements. The Respondent then counterclaimed for recovery of the fees that he had paid the Petitioner.

On September 12, 1983, the Petitioner and the Respondent both moved the District Court of the State of Minnesota for summary judgment. In his Memorandum of Law, the Petitioner set out Article I, Section 10, Clause 1, and the Fourteenth Amendment, Section 1, of the United States Constitution. (A-13). He also cited the cases of

New York Life Insurance Company v. Head, 234 U.S. 149, 34 S.Ct. 879, 58 L.Ed. 1259 (1914) and *Aetna Life Insurance Co. v. Dunken*, 266 U.S. 389, 45 S.Ct. 129, 69 L.Ed. 342 (1924), and contended they clearly showed that the State of Alaska could not exercise extra-territorial jurisdiction over the two retainer agreements that the Respondent had signed, that the two agreements were Minnesota contracts, that they were governed by Minnesota contract law, and that they were enforceable in accordance with their terms in the State of Minnesota. (A-16). He further contended that to hold otherwise would violate his rights under Article I, Section 10, Clause 1, and the Fourteenth Amendment, Section 1, of the United States Constitution. (A-20).

The District Court of the State of Minnesota completely ignored the Petitioner's United States Constitutional claims and did not pass upon them at all. The District Court ruled in the Respondent's favor. (A-6).

The Petitioner then appealed to the Court of Appeals of the State of Minnesota. In his Brief, the Petitioner again set out Article I, Section 10, Clause 1, and the Fourteenth Amendment, Section 1, of the United States Constitution, again cited the cases of *New York Life Insurance Company v. Head, ibid.* and *Aetna Life Insurance Co. v. Dunken, ibid.*, and again contended that the State of Alaska could not exercise extra-territorial jurisdiction over the two retainer agreements, that the agreements were Minnesota contracts, that they were governed by Minnesota contract law, that they were enforceable in accordance with their terms in the State of Minnesota, and that to hold otherwise would violate his rights under Article I, Section 10, Clause 1, and the Fourteenth Amendment, Section 1, of the United States Constitution. (A-24).

The Court of Appeals of the State of Minnesota did not refer to either Article I, Section 10, Clause 1, or the Fourteenth Amendment, Section 1, of the United States Constitution, but rather referred to the five factors enumerated by Professor Leflar in his *Choice Influencing Considerations in Conflicts Law*, 41 N.Y.U.L.R. 267, 282 (1966) and affirmed the decision of the Minnesota District Court. (A-2).

The Petitioner then petitioned the Supreme Court of the State of Minnesota to review the decision of the Court of Appeals. In his Petition, the Petitioner again specifically referred to Article I, Section 10, Clause 1, and the Fourteenth Amendment, Section 1, of the United States Constitution, and again contended that the State of Alaska could not exercise extra-territorial jurisdiction over the two retainer agreements, that the agreements were Minnesota contracts, that they were governed by Minnesota contract law, that they were enforceable in accordance with their terms in the State of Minnesota, and that to hold otherwise would violate his rights under Article I, Section 10, Clause 1, and the Fourteenth Amendment, Section 1, of the United States Constitution. The Petitioner further contended that the Court of Appeals of the State of Minnesota had failed to address the applicability of the Constitutional provisions raised by the Petitioner, and that the factors enumerated by Professor Leflar could not override the provisions of the United States Constitution. The Petitioner also attached to the Petition a copy of his District Court Memorandum of Law which referred to the cases previously referred to above. (A-38).

By its Order of December 20, 1984, the Minnesota Supreme Court summarily denied the Petitioner's Petition. (A-1).

ARGUMENT

The two retainer agreements were prepared and executed in the State of Minnesota, they were between two Minnesota residents, and all amounts payable under them were to be paid in the State of Minnesota.

They are Minnesota contracts and Minnesota contract law applies to them.

The State of Alaska never had jurisdiction over the contracts. The contracts were never presented to anyone in the State of Alaska for approval or disapproval.

Nor did the State of Alaska ever have jurisdiction over the Petitioner. He was not, and could not be, a party to the workmen's compensation case.

Without jurisdiction over the contracts or over the Petitioner, the State of Alaska could not exercise any control over the contracts. nor could it ever make any determinations with regard to the contracts that would be binding upon the parties to the contracts

The only State that could lawfully exercise jurisdiction over the contracts and over the parties to the contracts was the State of Minnesota wherein the contracts were made and both parties to the contracts reside.

Alaska has no extra-territorial power. It is merely one of 50 individual States. Its power is limited by its territorial boundaries.

Due Process under the United States Constitution prohibits Alaska from affecting contracts or people who are not under the jurisdiction of Alaska.

Due Process and the Contract Clause of the United States Constitution prohibit the State of Minnesota from allowing the State of Alaska to affect contracts made in the State of Minnesota between Minnesota residents.

Without jurisdiction over the contracts and over the Petitioner, any attempt by the State of Alaska to affect the contracts of the Petitioner and the Respondent must fail. And the State of Minnesota cannot abrogate its duties, and nullify the Petitioner's rights, by saying that it will not exercise its duties in regard to the contracts and the Petitioner, but will allow the State of Alaska to extra-territorially affect the contracts and the Petitioner. This would be fundamentally unfair. To act in such a way would constitute arbitrariness on the part of both the State of Alaska and the State of Minnesota.

A State without jurisdiction cannot act lawfully. A State with jurisdiction must act. The United States Constitution provides for both of these results.

At the time that the retainer agreements were signed, it was the reasonable expectation of both the Petitioner and the Respondent that any compensation recovered because of the Petitioner's efforts would be divided 3/4 and 1/4. Subsequent action by the State of Alaska not only is arbitrary and fundamentally unfair, it also frustrates the reasonable expectations of both the Petitioner and the Respondent.

There is nothing in the laws of the State of Minnesota which forbids these agreements. At the time that the agreements were signed, both the Petitioner and the Respondent believed that they would be adhered to. The Respondent expected the Petitioner to represent him and to recover compensation for him. This the Petitioner did. The Respondent also expected to pay 1/4 of the recovered compensation to the Petitioner. This he now refuses to do. With his refusal, the Respondent breached the contracts he had made. The Petitioner then sued the Respondent

in the only valid jurisdiction available to him. The State of Minnesota.

For the State of Minnesota to now refuse to exercise jurisdiction over the agreements is also arbitrary and fundamentally unfair. In doing so, the State of Minnesota effectively frustrates the reasonable expectations of the Petitioner and the Respondent which arose at the time that the retainer agreements were signed.

Both the State of Alaska and the State of Minnesota have denied Due Process to the Petitioner.

The Petitioner, therefore, respectfully requests the United States Supreme Court to issue a Writ of Certiorari in this case.

Respectfully submitted,

WILLIAM C. HOFFMAN
P. O. Box B
Lake Elmo, Minnesota 55042
(612) 770-6582
Petitioner

APPENDIX

STATE OF MINNESOTA
IN SUPREME COURT

C6-84-464

William C Hoffman,

Appellant,

vs.

David S. Henderson,

Respondent.

ORDER

Based upon all the files, records and proceedings herein, IT IS HEREBY ORDERED that William C. Hoffman's petition for further review be, and the same is, denied.

Dated: Dec. 20, 1984.

BY THE COURT:
DOUGLAS K. AMDAHL
Chief Justice

STATE OF MINNESOTA
IN COURT OF APPEALS

C6-84-464

Ramsey County — Wozniak, Judge

William C. Hoffman,
Appellant,

Pro Se
P. O. Box B
Lake Elmo, MN 55042

vs.

David S. Henderson,
Respondent.

Jeffrey M. Smith
McCullough, Dyrud & Smith
905 Parkway Drive
St. Paul, MN 55106

Endorsed
Filed: October 2, 1984
Wayne Tschimperle, Clerk
Minnesota Appellate Courts

SYLLABUS

Alaska law governs an attorney-client fee agreement executed in Minnesota that pertains to an action before the Alaska Workmen's Compensation Board.

Affirmed.

Heard, considered, and decided by Lansing, Presiding Judge, Wozniak, Judge, and Forsberg, Judge.

OPINION

WOZNIAK, Judge

Attorney Hoffman appeals from a summary judgment that denied his recovery of attorney's fees from his client

Henderson and which awarded Henderson amounts previously paid under the retainer agreement. We affirm.

FACTS

The facts are not in dispute. Henderson was injured in Alaska in a work-related incident in 1977. He retained Hoffman to represent him in an Alaska workers' compensation action. Both are Minnesota residents, and the retainer was made here. Legal services pertaining to the action were performed in both states. The retainer provided essentially that Hoffman would receive 1/4 and Henderson 3/4 of any recovery.

An uncontested hearing before the Alaska Workmen's Compensation Board resulted in a lump sum award of $20,618.39 and weekly compensation of $243.92 to Henderson. The November 28, 1977, decision and order also provided that the employer's carrier would pay attorney's fees of 25% of the first $1,000 and 10% of the remainder directly to Hoffman. This is consistent with the legal fees allowed under Alaska workers' compensation law. Nonetheless, Henderson paid Hoffman 25% of the lump sum award pursuant to their prior attorney-client agreement. He also paid Hoffman 25% of his weekly compensation until June 24, 1980. At that time, Henderson determined that Hoffman was being paid in excess of the Alaska Workmen's Compensation Board's award, and that attorney's fees ought not to have been paid directly by him, but rather by the employer's insurer. Henderson complained to the Board about the size of the fee. The Board notified both Henderson and Hoffman that it disapproved of the award because it contramanded their order and also Alaska Statutes Section 23.30.145. Thereafter, the insur-

ance carrier paid Hoffman directly 10% of the weekly award.

Each party moved for summary judgment. Hoffman claimed that he was entitled to the full amount under the retainer; Henderson claimed the fees ought to equal only the amount indicated by the Board. The court ruled in favor of Henderson and awarded him $6,862.03, the amount paid in excess of the Board's order that specified attorney's fees on the 25%-10% formula.

ISSUE

Does Minnesota law or Alaska law govern the retainer agreement?

ANALYSIS

Hoffman claims that the agreement is governed by Minnesota law and therefore is valid. To determine choice of law, our Supreme Court in *Milkovich v. Saari*, 295 Minn. 155, 203 N.W.2d 408 (1973), rejected the doctrine of *lex loci* in favor of the more flexible factor-oriented reasoning provided by Leflar, Choice Influencing Considerations in Conflicts Law, 41 N.Y.U.L.Rev. 267. Briefly stated, the court now looks at five factors:

> (a) Predictability of results; (b) maintenance of interstate and international order; (c) simplification of the judicial task; (d) advancement of the forum's governmental interests; and (e) application of the better rule of law.

Id. at 161, 203 N.W.2d at 412. It must be understood that attorneys' fees are an integral part of a state's workers' compensation scheme. A state is concerned about the

proportion of fees to be taken from an employee's award because that will affect his future standard of living.

Minnesota has little interest in the retainer, and Alaska has a great interest. Therefore, Alaska's governmental interests are advanced by applying that state's law. The application of Alaska law also yields predictable results. Outstate attorneys and instate attorneys will be compensated uniformly for similar services. Use of Alaska law promotes interstate order.

The Board unequivocally has expressed its view on the reasonableness of Hoffman's fee, both in its order and by a subsequent notice. Out of comity, we respect their decision on a matter within their expertise and which has a direct impact on their compensation scheme.

Finally, the 25%-10% formula provides the better rule of law because it is tailored to Alaska's compensation scheme. To allow a recovery under any other formula would ignore the intentions of the Alaska legislature. Under *Milkovich,* Alaska law clearly is preferred.

Application of Alaska law is constitutional so long as that state has "significant contacts" with the retainer. *Allstate Ins. Co. v. Hague,* 449 U.S. 302 (1981). Since Hoffman had to avail himself of Alaska law in order to recover on the retainer, and since Alaska workers' compensation law provides guidelines for the recovery of attorneys' fees, significant contacts are present.

DECISION

It is undeniable that Hoffman commendably performed his legal services. Nonetheless, the amount of his fee must be determined in accordance with Alaska's workers' com-

pensation laws which reflect that state's strong interest in controlling the size of attorneys' fees.

Affirmed.

/s/ D. D. Wozniak
Sept. 20, 1984

STATE OF MINNESOTA — DISTRICT COURT
County of Ramsey — Second Judicial District

William C. Hoffman,

Plaintiff,

vs.

David S. Henderson,

Defendant.

ORDER

Court File No. 445994

The above-entitled matter came on for hearing before the Court on the 12th day of September, 1983, at a Special Term thereof, pursuant to the Motion for Summary Judgment of the Defendant, David S. Henderson. Jeffrey M. Smith, D. Patrick McCullough & Associates, appeared on behalf of the Defendant, David S. Henderson; Plaintiff, William C. Hoffman, appeared Pro Se.

The Court, having fully considered the Motion of the Defendant, the Affidavits, Memorandum of Law, argument of counsel and upon all the filings and proceedings herein, and being fully advised in the premises, makes the following Order:

IT IS HEREBY ORDERED:

1. That Summary Judgment is granted in favor of Defendant, David S. Henderson, and against Plaintiff, William C. Hoffman, on the alleged claim for damages as set forth in Plaintiff's Complaint, pursuant to Rule 56 of the Minnesota Rules of Civil Procedure for the District Courts.

2. That Summary Judgment is granted in favor of Defendant, David S. Henderson, and against Plaintiff, William C. Hoffman, on Counts 1 and 2 of Defendant's Counter-Claim against Plaintiff, pursuant to Rule 56 of the Minnesota Rules of Civil Procedure for the District Court. Judgment is hereby ordered in the sum of Six Thousand Eight Hundred Sixty-two and 03/100 ($6,862.-03) Dollars in favor of Defendant, David S. Henderson, and against Plaintiff, William C. Hoffman.

Dated: November 16, 1983.

BY THE COURT:

/s/ BERTRAND PORITSKY
Judge of the District Court

MEMORANDUM

Both parties have moved for summary judgment. There is no dispute over the material facts. The central issue is whether the contract—embodied in the writings of July 13, 1978, and February 20, 1979—is valid and enforceable in a Minnesota court.

In my view, the contract is void. Under Alaska Workmans' *(sic)* Compensation Law, no contract for legal fees is valid and binding unless it is approved by the Workman's

Compensation Board. Alaska Statute 23.30.145. In this case, the Board ruled that the fees should be 25% of the first $1,000 in compensation and 10% of the compensation in excess of $1,000. The contract in question calls for 25% of the total compensation. It is thus in violation of Alaska law.

It is established law in this state that a contract in violation of public policy is void. 4 Dun. Dig. 2d, Contracts, §7.03, p. 37 (3d ed. 1977). Under Minnesota law, no claim for legal fees arising out of representation in a Minnesota Workers' Compensation proceeding is valid unless they are approved by certain statutorily-designated officers. Minn. Stat. 176.081. In my view, the cited statute creates a Minnesota public policy: Minnesota courts will treat as void a contract for legal services in a Workers' Compensation proceeding—in any state—if the fee arrangement therein is in violation of the laws of the state in which the proceeding is held. The fees called for in the contract in the instant case are in excess of the amounts allowed by the Alaska Board. As a result, the contract is in violation of Minnesota public policy and is void in the courts of this state.

The fact that the Minnesota Statute (Sec. 176.081) does not address legal fees relating to proceedings in other states does not change the result. In *Buck v. Walker*, 115 Minn. 239, 132 N.W. 205 (1911), the Supreme Court noted that even without a statute, courts may declare void, as against public policy, contracts which are clearly injurious to the public interest. *Id.* at 244, 132 N.W. 207. Hence, a statute prohibiting the precise contract (i.e., out-of-state) is not needed, if the Legislature has ruled that the class of contracts is against the public interest.

In *Buckley v. Humason,* 50 Minn. 195, 52 N.W. 385 (1892), the Court held that a contract which is in violation of the law of the place where it is made and to be performed is void. In that case the Plaintiff acted as a real estate broker in Chicago without obtaining the license required by a Chicago ordinance. He sued in Minnesota to recover fees, but the Supreme Court held that by reason of the violation of Illinois law the contract for fees could not be enforced in a Minnesota court. I believe the same rule applies to this case, notwithstanding the fact that the contract between Plaintiff and Defendant was made in Minnesota, since the contract was to be performed in Alaska. It should be noted that had the instant case arisen out of representation before the Minnesota Workers' Compensation Commission, it would have required the approval of a designated officer. It may therefore be said that the contract was in violation of the place where it was made.

By reason of the fact that the contract is void, Plaintiff cannot recover unpaid fees. Defendant must prevail on his motion for summary judgment with respect to Plaintiff's claim.

As to Defendant's motion for summary judgment on his counterclaim:

"It is the general rule that a payment made under an illegal contract cannot be recovered, but there are exceptions based upon statutes or special considerations." 14B Dun. Dig., Payment, §7465a, p. 318 (3d ed., rev. 1974).

In my opinion, Defendant has shown that his case has the special considerations referred to in the exception above Plaintiff was and is a lawyer. He undertook to represent Defendant, a non-lawyer, in a legal proceeding.

As early as December, 1979, Plaintiff knew that his fees were in violation of Alaska law. Although his acts were not *mala in se*, they were *mala prohibita*, and clearly so after the parties received the Decision and Order of the Alaska Board. Defendant is therefore entitled to recover all sums, above the 25%/10% formula which he has paid to Plaintiff.

Finally, as to attorney's fees, I do not find that Plaintiff's actions are within the scope of Minn. Stat. 549.21. Accordingly, no fees will be allowed.

B P.

BP/dl

STATE OF MINNESOTA
County of Ramsey

DISTRICT COURT
Second Judicial District

William C. Hoffman,

Plaintiff,

vs.

David S. Henderson,

Defendant.

PURSUANT JUDGMENT ROLL

FILE NO. 445994

Pursuant to the Order, Poritsky, J., signed and filed December 16, 1983, IT IS ORDERED:

"1. Summary Judgment is granted in favor of Defendant, David S. Henderson, and against Plaintiff, William C. Hoffman, on the alleged claim for damages as

set forth in Plaintiff's Complaint, pursuant to Rule 56 of the Minnesota Rules of Civil Procedure for the District Courts.

2. That Summary Judgment is granted in favor of Defendant, David S. Henderson, against Plaintiff, William C. Hoffman, on Counts 1 and 2 of Defendant's Counter-Claim against Plaintiff, pursuant to Rule 56 of the Minnesota Rules of Civil Procedure for the District Court. Judgment is hereby ordered in the sum of Six Thousand Eight Hundred Sixty-two and 03/100 ($6,-862.03) Dollars in favor of Defendant, David S. Henderson, and against Plaintiff, William C. Hoffman.

Now, on motion of Jeffrey M. Smith said attorney, IT IS HEREBY ADJUDGED that the Plaintiff herein recover of said Defendant William C. Hoffman the sum of Six thousand eighty hundred sixty-two and 03/100 dollars damages with no dollars costs and disbursements in all amounting to $6,862.03.

Signed this 20th day of December, 1983.

Docketed:

Time: 10:15 a.m.

Date: 12/0/83

Copies mailed:

Jeffrey M. Smith, atty for deft.

J. E. GOCKOWSKI
Clerk of District Court
By /s/ Anna M. Schiemann
Deputy Clerk

TYPED COPY OF THE WRITTEN RETAINER AGREEMENT OF JULY 13, 1978.

July 13, 1978

I, David S. Henderson, hereby retain William C. Hoffman to represent me with regard to any and all claims that I may have as a result of an injury that I sustained on February 7, 1977 while working for Peter Kiewit & Sons Co at Prudhow Bay in Alaska. This will be handled on a contingent fee basis whereby I will receive 3/4 of anything recovered and Mr. Hoffman will receive 1/4 of anything recovered. Mr. Hoffman will not receive any portion of the $18,000.00 that Home Insurance Co. is going to voluntarily pay me as an advance on my permanent partial disability, nor mileage payments, nor parking expenses, nor such miscellaneous expenses that I must pay. If Mr. Hoffman pays any expenses on my behalf, I will reimburse him for those expenses at the conclusion of this matter.

/s/ David S. Henderson

SUPPLEMENT TO RETAINER AGREEMENT OF JULY 13, 1978

February 20, 1979

This Agreement hereby supplements the Retainer Agreement that I, David S. Henderson, signed on July 13, 1978 in that the Retainer Agreement of July 13, 1978 provided that Mr. Hoffman would not receive any portion of the $18,000.00 that Home Insurance Company was going to voluntarily pay to me as an advance on my permanent partial disability. It has turned out that Home Insurance

Company has not paid the $18,000.00 to me voluntarily, but rather has merely paid $3,902.72 as a voluntary advance payment on my permanent partial disability. That $3,902.72 belongs entirely to me, and Mr. Hoffman is not entitled to any portion of it, however, all other amounts that I receive on my claim, except mileage payments, parking expenses, and miscellaneous expenses that I have to pay, shall be divided between me and Mr. Hoffman, and I shall receive 3/4 of all such other amounts, and Mr. Hoffman shall receive 1/4 of all such other amounts.

/s/ David S. Henderson

(Title of Cause.)

PLAINTIFF'S MEMORANDUM OF LAW

File No. 445994

PERTINENT LAWS

1. UNITED STATES CONSTITUTION: ARTICLE I, SECTION 10. "No State shall *** pass any *** Law impairing the Obligation of Contracts ***."

2. UNITED STATES CONSTITUTION: FOURTEENTH AMENDMENT, SECTION 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; ***."

3. MINNESOTA STATE CONSTITUTION: BILL OF RIGHTS: ARTICLE I, SECTION 11. "No *** law impairing the obligation of contracts shall be passed ***."

FACTS

From July 13, 1978, the date that the Defendant signed the Retainer Agreement with the Plaintiff, to the present time, both parties to this lawsuit have been, and still are, residents of the State of Minnesota, living, and having their domicile, in this State.

Both the Retainer Agreement of July 13, 1978, and the Supplement to Retainer Agreement were executed, delivered, and payments thereunder have been made, and all future payments thereunder are to be made, in the State of Minnesota.

Virtually all of the work pertaining to the Defendant's Alaskan workmen's compensation claim was done in the State of Minnesota except for some slight hearing preparation, and the hearing before the Alaska Workmen's Compensation Board which lasted approximately one hour.

All office conferences, review of medical records and reports, obtaining medical examinations and reports, matters pertaining to retraining, preparation of pleadings, correspondence, telephone discussions and the taking of depositions was done in the State of Minnesota.

The Doctors involved with this case were all from Minnesota, Orthopedic Surgeon Daniel Gaither, Orthopedic Surgeon Paul Yellin, Orthopedic Surgeon Robert Wengler and Neurosurgeon Robert Merrick.

The medical records of the Defendant were reviewed at St. Luke's Hospital, Miller Hospital and Midway Hospital.

The depositions of Doctor Robert Wengler, Vocational Rehabilitation Counselor Joanne Ciccarelli, Medical Records Librarian of St. Luke's Hospital, Medical Records Librarian of Miller Hospital, and Medical Records Librarian of Midway Hospital were all taken in Minnesota.

More than 16 months after the Defendant signed the Retainer Agreement, and more than 9 months after the Defendant signed the Supplement to Retainer Agreement, the Decision and Order of the Alaska Workmen's Compensation Board was mailed to the Plaintiff and Defendant in Minnesota.

After receipt of the Decision and Order, the Defendant ratified the Contracts that he had signed with the Plaintiff by paying the Plaintiff one-fourth of the total initial amount received, $5,154.59 of the $20,618.39.

Thereafter, the Plaintiff continued to work on behalf of the Defendant with regard to his claim as shown by Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 attached hereto and made a part hereof.

The Defendant continued his ratification of his contracts with the Plaintiff by sending to the Plaintiff one-fourth of the monthly payments paid on this claim through June 24, 1980.

From June 24, 1980, to the date of this hearing, September 12, 1983, a total of 168 weeks, the Plaintiff has received 10% of the total weekly payments of $243.92, but the Defendant has refused to pay the additional 15% of said $243.92 to the Plaintiff. The 15% amounts to $36.59 per week, or a total of $6.147.12 for the 168 weeks.

So long as the Defendant receives the weekly payments of $243 92, which will be for the rest of his life, the

Plaintiff is entitled to payment of $36.59 from each such payment from the Defendant.

Since the Defendant has had the use of the Plaintiff's money for the past 168 weeks, interest is applicable to the unpaid amount of $6,147.12.

All payments by the Defendant to the Plaintiff have been made in the State of Minnesota, and all future payments are to be made in the State of Minnesota.

CASES

The case of *New York Life Insurance Company v. Head,* 234 U.S. 149, 34 S. Ct. 879, 58 L. Ed. 1259, (1914), involved a resident of New Mexico, making application for a life insurance policy in Missouri, with a New York Company. The terms of the policy stated that the policy would be deemed to have been issued in New York and would be treated as a New York contract. Upon the death of the insured, the beneficiary sued the New York Company in the State of Missouri. The Missouri Courts held that their laws were applicable to the insurance policy. The insurance company contended that the laws of New York were applicable to the insurance policy and that the position of the Missouri Courts violated the Contract Clause of Section 10 of the United States Constitution and the 14th Amendment of the United States Constitution.

The United States Supreme Court stated the following, p. 882:

> "It would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that state and in the state of New York, and there destroy freedom of contract without throwing down the con-

stitutional barriers by which all the states are restricted within the orbits of their lawful authority and upon the preservation of which the government under the Constitution depends. This is so obviously the necessary result of the Constitution that it has rarely been called in question, and hence authorities directly dealing with it do not abound. The principle, however, lies at the foundation of the full faith and credit clause and the many rulings which have given effect to that clause."

"A state may not, consistently with the due process clause of the 14th Amendment, extend its authority beyond its legitimate jurisdiction either by way of the wrongful exertion of judicial power or the unwarranted exercise of the taxing power."

The case of *Aetna Life Insurance Co. v. Dunken,* 266 U. S. 389, 45 S. Ct. 129, 69 L. Ed. 342 (1924), involved an insurance policy issued by a Connecticut corporation to a resident of Tennessee. After the policy was issued the insured moved to Texas, where he died. Suit was brought against the insurance company in Texas and a judgment was rendered against the insurance company. On appeal, the insurance company contended that application of Texas law to the policy violated the Contract provision of Section 10 of the United States Constitution and also Section 1 of the 14th Amendment of the United States Constitution.

The United States Supreme Court held that the policy was a Tennessee contract and stated the following, pp. 132,133:

"The contract contained in the original policy was a Tennessee contract. The law of Tennessee entered into it and became a part of it. The Texas statute was incapable of being constitutionally applied to it since the effect of such application would be to regulate business outside the state of Texas and control contracts made by citizens of other states in disregard of their laws under which penalties and attorney's fees are not recoverable."

"From these premises it necessarily results that the second policy follows the status of the first for which it was exchanged, and is not subject to the Texas statute relating to penalties and attorney's fees but is controlled by Tennessee law. The judgment below, therefore, in so far as it gives effect to the Texas statute by imposing a penalty of 12 per cent, and allowing attorney's fees, is erroneous, *in that the Texas statute cannot constitutionally be applied to a Tennessee contract.*"

The case of *Hewitt v. Dredge,* 133 M. 171, 157 N.W. 1080. (1916), involved promissory notes which were executed, delivered, and payable in the State of Minnesota and which were secured by a mortgage upon land in the province of Manitoba, Canada.

The Plaintiff sued on the notes in Minnesota, and the Defendants set up a Canadian Act called the Moratorium Act as a defense.

The Minnesota Supreme Court, in upholding judgment for the Plaintiff, stated, p. 171:

"The trial court was clearly right. The notes and coupons were executed in Minnesota and payable

> there, and both the makers and the payee were residents of Minnesota. It is too plain for argument that the laws of this state control, and that no act of the legislature of the Canadian province where the mortgaged land is situated can affect the right to recover in this state on the notes."

The case of *Merchants State Bank v. Sunset Orchard Land Company*, 158 M. 108, 196 N.W. 963, (1924), involved a promissory note which was executed, delivered, and payable in Minnesota and which was secured by a mortgage on a tract of land in the State of Montana.

After default, the Plaintiff sued the Defendants on the note in the State of Minnesota. The Defendants alleged that the statutes of Montana barred the Plaintiff from bringing its action in the State of Minnesota.

In upholding the lower court, the Minnesota Supreme Court stated, p. 110:

> "The statute relied upon merely regulates the procedure in Montana and has no extra-territorial force. The note was executed in Minnesota and is payable in Minnesota to a Minnesota bank. *It is a Minnesota contract.* An action upon it brought in the courts of this state is governed by the laws of this state."

ARGUMENT

The Retainer Agreement signed by the Defendant on July 13, 1978, and the Supplement to Retainer Agreement signed by the Defendant on February 20, 1979 are Minnesota contracts. They were prepared in Minnesota, they involved two Minnesota residents, they were signed in Minnesota, they were delivered in Minnesota, all amounts pre-

viously paid under them have been paid in Minnesota, and all remaining amounts payable under them are to be paid in Minnesota. These contracts are governed by Minnesota Contract Law. They are not governed by Minnesota Workers' Compensation Law, nor are they governed by Alaskan Law.

It is clear that they are not governed by Minnesota Workers' Compensation Law. Minnesota Statute 176.-081, Subdivision 1, which has been referred to by opposing counsel in his Memorandum, specifically states as follows:

> "No claim for legal services or disbursements pertaining to any demand made or suit or proceeding *brought under the provisions of this chapter* is an enforceable lien against the compensation or is valid or binding in any other respect unless approved in writing by the division, a compensation judge, a judge of the district court, or the workers' compensation court of appeals, *if the claim arises out of a proceeding for compensation under this chapter,* ***."..

Clearly, Defendant Henderson's claim was not "brought under the provisions of this chapter", nor did his "claim arise out of a proceeding for compensation under this chapter".

Opposing counsel's reference to the Minnesota Workers' Compensation Laws is erroneous since those laws have nothing at all to do with the contracts between the Plaintiff and the Defendant.

Alaskan Law does not govern the contracts, and has no bearing, or effect, on them. Alaskan Laws can have no extra-territorial effect. To give them such effect would vio-

late both the United States Constitution and the Minnesota State Constitution. As the United States Supreme Court said in the case of *New York Life Insurance Company v. Head.* id, 882:

> *"This is so obviously the necessary result of the constitution that it has rarely been called in question, and hence authorities directly dealing with it do not abound."*

Opposing counsel has attached Exhibit L to his Memorandum, which is the letter of August 1, 1980 from Mr. P. R. Troeh, Jr. to the Plaintiff, and places great emphasis upon it by referring to it a number of times in the Memorandum. However, in that letter, Mr. Troeh expressly stated that the Alaska Workmen's Compensation Board had *never* seen the Retainer Agreement of July 13, 1978, and did not see the Supplement to Retainer Agreement until it was sent to them by the Defendant sometime after April 22, 1980, a period of almost 9 months after the hearing was held before the Board on July 30, 1979.

The Plaintiff contends, and has always contended, that the contracts signed by the Defendant are Minnesota Contracts, within the jurisdiction of the Minnesota Courts, and governed by Minnesota Laws on Contracts. That is the very reason why this action has been brought by the Plaintiff against the Defendant in Minnesota Ramsey County District Court.

As the Minnesota Supreme Court stated in the case of *Hewitt v. Dredge,* id, 172:

> "It is too plain for argument that the laws of this state control, and that no act of the legislature of the

> Canadian province where the mortgaged land is situated can affect the right to recover in this state on the notes."

Similarly, the statements by the Minnesota Supreme Court in the case of *Merchants State Bank v. Sunset Orchard Land Company*, id, 110, are applicable here:

> "The statute relied upon merely regulates the procedure in Montana and has no extra-territorial force."
>
> "It is a Minnesota contract. An action upon it brought in the courts of this state is governed by the laws of this state."

Opposing counsel has referred to a number of cases in his Memorandum, however, not one of those cases is even remotely similar to this case. All of those cases involved residents of specific states, making contracts in their states of residence, where their worker's compensation claims were brought. The decisions rendered in those cases are not applicable to this case and should be disregarded.

Since the Plaintiff is entitled to judgment in this case, opposing counsel's comments in his Memorandum regarding fees are also inapplicable and should be disregarded.

CONCLUSION

Judgment should be rendered in this case for the Plaintiff, and against the Defendant, in the sum of $6,147.12, plus interest, costs and disbursements, plus $36.59 per week for each week of the Defendant's remaining life for which Defendant receives a compensation payment of $243.92. In the event the Defendant should settle his com-

pensation claim for a lump sum judgment for the Plaintiff should also be rendered in the amount of 15% of any such settlement.

Dated this 9th day of September, 1983.

/s/ William C. Hoffman
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STATE OF MINNESOTA
IN COURT OF APPEALS
APPELLATE COURT CASE NUMBER: C6-84-464

William C. Hoffman,

Appellant,

vs.

David S. Henderson,

Respondent.

APPELLANT'S BRIEF

LEGAL ISSUES

1. Are retainer agreements between a Minnesota attorney and a Minnesota resident, which pertain to an Alaskan workmen's compensation case, and which are prepared, signed and delivered in Minnesota, with all amounts payable thereunder to be paid in Minnesota, Minnesota contracts which are governed by Minnesota

contract law? The trial court held that the contracts violate public policy and are void.

2. Are the retainer agreements governed by Alaska's workmen's compensation laws?

   The trial court held that the contracts violate public policy and are void.

3. Are the retainer agreements governed by Minnesota's workers' compensation laws?

   The trial court held that the contracts violate public policy and are void.

4. Who is entitled to judgment in this case, and in what amount?

   The trial court held that the Respondent should have judgment and that he should recover the amounts that he had paid to the Appellant.

STATEMENT OF THE CASE

This case was venued in Ramsey County District Court and was decided by the Honorable Bertrand Poritsky.

It involves two signed retainer agreements between the Appellant, a Minnesota attorney, and the Respondent, a Minnesota resident, which pertain to an Alaskan workmen's compensation claim of the Respondent.

The Appellant contends that the signed agreements are valid, enforceable, Minnesota contracts which are governed by Minnesota contract law, and that he should recover in accordance with their terms.

The Respondent contends that the signed agreements should not be given any effect by the Minnesota courts,

that he should not be required to make any more payments under them, and that he should recover the amounts that he has previously paid under them.

The trial court held that the signed agreements violate public policy and are void, and that the Respondent should recover from the Appellant the amounts that the Respondent previously paid to the Appellant under the signed agreements.

STATEMENT OF FACTS

On February 7, 1977, the Respondent sustained a work related injury while working in Alaska. (A-35).

On July 13, 1978, the Respondent, a Minnesota resident, retained the Appellant, a Minnesota attorney, to represent him with regard to his Alaskan workmen's compensation claim. The Respondent signed a retainer agreement in the Appellant's office on that date which provided that the Respondent would receive 3/4 of any recovery, and the Appellant would receive 1/4 of any recovery. However, since the Respondent advised the Appellant that the insurance company was going to voluntarily pay him $18,000.00, the Appellant excepted the $18,000.00, plus other recoverable items, from the retainer agreement. (A-3)

On February 20, 1979, the Respondent advised the Appellant that the insurance company had voluntarily paid him only $3,902.72. The Respondent then signed a supplement to the retainer agreement of July, 13, 1978 in the Appellant's office. The supplement provided that the Respondent would receive 3/4 of any recovery, and the Appellant would receive 1/4 of any recovery, however, the Appellant excepted the $3,902.72, plus other recoverable items, from the supplement. (A-4).

Prior to hearing, the Appellant performed the following services in the State of Minnesota:

1. Reviewed the medical records of Doctor Daniel Gaither, orthopedic surgeon. (A-55).
2. Reviewed the medical records of Doctor Robert Merrick, neurosurgeon. (A-55).
3. Reviewed the medical reports from Doctor Paul Yellin, orthopedic surgeon. (A-55).
4. Made arrangements for the Respondent to be examined by Doctor Robert Wengler, orthopedic surgeon, secured, and reviewed, medical reports from Doctor Wengler, and personally discussed the case with Doctor Wengler. (A-55).
5. Reviewed the medical records at St. Luke's Hospital. (A-55).
6. Reviewed the medical records at Miller Hospital. (A-55).
7. Reviewed the medical records at Midway Hospital. (A-55).
8. Had the Respondent contact the State of Minnesota's Department of Vocational Rehabilitation with regard to retraining, and personally discussed the Respondent's situation with Vocational Rehabilitation Counselor, Joanne Ciccarelli, at her office. (A-55).
9 Took the depositions of Doctor Wengler, Miss Ciccarelli, and the medical records librarians of the three hospitals. (A-55, 56).

10. Prepared the pleadings pertaining to the case. (A-55)

11. Office conferences with the Respondent. (A-55).

12. Numerous telephone calls and a great deal of correspondence. (A-55).

13. Dealings with the insurance company. (A-55).

Only the hearing, which lasted approximately one hour, and some slight preparation, were performed in Alaska. (A-55).

The matter of attorney fees was not submitted to the Alaskan Workmen's Compensation Board. (A-62).

On November 28, 1979, a Decision and Order was issued by the Alaskan Workmen's Compensation Board, and copies were sent to the Respondent and the Appellant. The Decision and Order provided for attorney fees of 25% of the first $1,000.00 awarded, and 10% of the remainder awarded. (A-40).

On December 18, 1979, a check for $20,618.39 was received, and was divided 3/4 to the Respondent and 1/4 to the Appellant in accordance with the terms of the two retainer agreements. (A-42). Thereafter, the Respondent received weekly compensation in the amount of $243.92. Until June 24, 1980, the Respondent kept 3/4 of the weekly compensation, and paid 1/4 of the weekly compensation to the Appellant. (A-56). After June 24, 1980, the Respondent refused to pay the Appellant anything, and the Appellant then instituted this action. (A-56). All of the above amounts were paid in the State of Minnesota. (A-55).

The Respondent continues to receive weekly compensa-

tion in the amount of $243.92, and will continue to receive these payments for the rest of his life, if he does not settle his claim for a lump sum payment. (A-57).

After the hearing, the Appellant performed the following services in the State of Minnesota:

1. Resisted an attempt by the insurance company to reduce the Respondent's compensation payments because of social security payments. (A-65).
2. Resisted an attempt by the insurance company to terminate the Respondent's compensation payments upon his reaching retirement age. (A-64).
3. Attempted to negotiate a lump sum settlement of this claim, and received an offer of $80,000.00, which the Respondent refused. (A-75, 76).
4. Procured payment of miscellaneous expenses for the Respondent. (A-56).
5. Office meetings with the Respondent. (A-56).
6. Numerous telephone calls and various correspondence. (A-56).

After June 24, 1980, the Appellant advised the insurance company that the Respondent refused to make any more payments to him, and the insurance company then commenced payment to the Appellant of 10% of the Respondent's weekly benefits. (A-56).

ARGUMENT

This is the classic case, encountered by all attorneys who are in private practice long enough, of the client, who

when in trouble, thinks you are the greatest, most indispensable person in the whole world, but after the work is finally done, and the case is finally won, doesn't want to pay you.

It is also the classic case of a lawsuit which requires a specific decision because of the United States Constitution, the Minnesota State Constitution, the cases of the United States Supreme Court and the cases of the Minnesota Supreme Court, which is then decided by the trial court on the basis of what the Judge thinks public policy should be.

ISSUES

1. Are retainer agreements between a Minnesota attorney and a Minnesota resident, which pertain to an Alaskan workmen's compensation case, and which are prepared, signed and delivered in Minnesota, with all amounts payable thereunder to be paid in Minnesota, Minnesota contracts which are governed by Minnesota contract law?

They certainly are.

The United States Constitution, Article 1, Section 10, provides that "No State shall pass any law impairing the obligation of contracts." (A-89).

The Minnesota State Constitution, Bill of Rights, Article 1, Section 11, provides that "No law impairing the obligation of contracts shall be passed." (A-89).

The United States Constitution, Fourteenth Amendment, Section 1, provides that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; nor shall any State deprive any person of property without due process of law." (A-89).

Seventy years ago, in the case of *New York Life Insurance Company v. Head,* 234 U.S. 149, 34 S.Ct. 879, 58 L.Ed 1259, (1914), the United States Supreme Court held that the laws of a specific State can have no extra-territorial effect and are not applicable to contracts such as those in this case.

> "It would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State and in the State of New York and there destroy freedom of contract without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the government under the Constitution depends. This is so obviously the necessary result of the Constitution that it has rarely been called in question, and hence authorities directly dealing with it do not abound. The principle, however, lies at the foundation of the full faith and credit clause and the many rulings which have given effect to that clause."
>
> "A State may not, consistently with the due process clause of the 14th Amendment, extend its authority beyond its legitimate jurisdiction either by way of the wrongful exertion of judicial power or the unwarranted exercise of the taxing power." p. 882.

Sixty years ago in the case of *Aetna Life Insurance Co. v. Dunken,* 266 U.S. 389, 45 S.Ct. 129, 69 L.Ed 342,

(1924), the United States Supreme Court held that contracts, such as those in this case, are contracts of the State where they are made, and they are governed by the contract laws of the State where they are made.

> "The contract contained in the original policy was a Tennessee contract. The law of Tennessee entered into it and became a part of it. The Texas statute was incapable of being constitutionally applied to it since the effect of such application would be to regulate business outside the State of Texas and control contracts made by citizens of other States in disregard of their laws under which penalties and attorney's fees are not recoverable." p. 132.

> "From these premises it necessarily results that the second policy follows the status of the first for which it was exchanged, and is not subject to the Texas statute relating to penalties and attorney's fees but is controlled by Tennessee law. The judgment below, therefore, in so far as it gives effect to the Texas statute by imposing a penalty of twelve per cent and allowing attorney's fees is erroneous, in that the Texas statute cannot constitutionally be applied to a Tennessee contract." p. 133.

Sixty-eight years ago, in the case of *Hewitt v. Dredge*, 133 M. 171, 157 N.W. 1080, (1916), the Minnesota Supreme Court held that contracts which involved two Minnesota residents and which were executed, delivered and payable in Minnesota were Minnesota contracts governed by Minnesota contract law and they were not governed by the laws of any other State or Country.

> "The trial court was clearly right. The notes and coupons were executed in Minnesota and payable there. and both the makers and the payee were residents of Minnesota. It is too plain for argument that the laws of this State control, and that no act of the Legislature of the Canadian Province where the mortgaged land is situated can affect the right to recover in this State on the notes." p. 172.

Sixty years ago in the case of *Merchants State Bank v. Sunset Orchard Land Company,* 158 M. 108, 196 N.W. 963, (1924), the Minnesota Supreme Court held that the laws of another State do not apply to Minnesota contracts because such laws can have no extra-territorial effect.

> "The statute relied upon merely regulates the procedure in Montana and has no extra-territorial force. The note was executed in Minnesota and is payable in Minnesota to a Minnesota bank. It is a Minnesota contract. An action upon it brought in the courts of this State is governed by the laws of this State." p. 110.

2. Are the retainer agreements governed by Alaska's workmen's compensation laws?

They are not.

Alaska's laws pertain to Alaska's residents. They do not pertain to Minnesota's residents. Alaska's laws cannot have any extra-territorial effect, and the United States Constitution, the Minnesota State Constitution, and the cases cited above clearly show this.

The retainer agreements are between two Minnesota residents. They were prepared, signed and delivered in

Minnesota. All sums payable under them are to be paid in Minnesota. They are Minnesota contracts.

To allow the Alaskan Workmen's Compensation Board to set the Appellant's fee would not only violate the contract clauses of the United States Constitution and the Minnesota State Constitution, but it would also violate the Fourteenth Amendment, Due Process Clause of the United States Constitution.

An attorney is not a party in a lawsuit. He merely is the representative of a party.

The Decision and Order of the Alaskan Workmen's Compensation Board specifically states that only a party may appeal the Decision and Order. (A-41). It does not allow the Appellant to appeal.

To determine someone's rights, without allowing that person to appeal, is a clear violation of due process.

3. Are the retainer agreements governed by Minnesota's workers' compensation laws?

They are not.

This is not a Minnesota workers' compensation case. It was not brought before Minnesota's Compensation Courts. It was not brought under Minnesota's Compensation Laws. (Chapter 176 Minnesota Statutes). Minnesota's Compensation Laws do not apply to it.

Prior to its amendment in 1983, Minnesota Statute 176.-081. Subdivision 1, read as follows:

> "No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this chapter is an enforceable lien against the compensation or is valid or binding in any other respect unless approved in writing by the division, a compensation judge, a

> judge of the district court, or the workers' compensation court of appeals, if the claim arises out of a proceeding for compensation under this chapter, ***."

This statute clearly stated that it applied only to "demands, suits, or proceedings brought under the provisions of Chapter 176", and it also clearly stated that the "claim had to arise out of a proceeding for compensation that was brought under Chapter 176."

In 1983. Minnesota Statute 176.081 was amended, and now Minnesota Statute 176.081, Subdivision 9 reads as follows:

> "An attorney who is hired by an employee to provide legal services with respect to a claim for compensation made pursuant to this chapter ***."

Even as amended, the statute still clearly states that it applies only to "claims for compensation which are made under Chapter 176."

The language of the statute is plain and clear. It cannot be disregarded. Chapter 176 of Minnesota's Statutes applies only to compensation claims which are brought under, and in accordance with, the laws of that Chapter.

The Respondent's compensation claim was not brought under, or in accordance with, Chapter 176, and the laws set out in that Chapter do not apply to his claim.

4 Who is entitled to judgment in this case, and in what amount?

The Appellant is entitled to 15% of the Respondent's weekly benefit payments of $243.92 from, and after, June 24, 1980. If the Respondent settles his compensation

claim for a lump sum, the Appellant is entitled to 15% of the settlement. All past due payments should bear interest at the proper legal rate.

The retainer agreements provide that the Appellant is to receive 25% of the compensation recovered. After the Respondent stopped paying the Appellant on June 24, 1980, the Appellant contacted the insurance company and advised them of the Respondent's refusal to make any more payments to him, and the insurance company then commenced payment to the Appellant of 10% of the Respondent's weekly benefits.

The trial court did not hold that Alaska's workmen's compensation laws applied to the retainer agreements. Nor did the trial court hold that Minnesota's workers' compensation laws applied to the retainer agreements. Rather, the trial court held that the retainer agreements violate public policy and, therefore, are void.

Whose public policy? Not Alaska's. If the Respondent had been a resident of Alaska his weekly benefit payment would have been $551.86. (A-39). Because he is a Minnesota resident, the Alaskan Workmen's Compensation Board reduced his payment to $243.92 per week.

And not Minnesota's. The Respondent was injured on February 7, 1977. If the Respondent's claim had been brought under Chapter 176 of Minnesota's Statutes, his weekly compensation benefit would have been $145.33. Even with yearly increments of 6%, his weekly benefit through the present time would still only be $231.64. (A-94)

The trial court cited the case of *Buck v. Walker*, 115 M. 239, 132 N.W. 207, (1911), in his Memorandum. (A-80). However, in that case, the Minnesota Supreme Court stated, p. 207:

> "Primarily it is the prerogative of the Legislature to declare what contracts and acts are contrary to public policy, and forbid them; hence public policy is what a statute enacts. Courts cannot declare contracts or acts authorized by statute to be contrary to public policy."

Both the United States Constitution and the Minnesota State Constitution, as well as the cases previously cited, clearly show that I had the right to make these contracts with the Respondent. Certainly, a statute is not of the same force and effect as a Constitutional provision.

The trial court stated in his Memorandum that contracts which are clearly injurious to the public interest may be declared void by courts as being against public policy. (A-80).

I fail to see how my recovering weekly benefits of $243.-92 for the Respondent, as opposed to $145.33 per week, injured anyone, excepting only the insurance company

The trial court also cited the case of *Buckley v. Humason*, 50 M. 195, 52 N.W. 385, (1892), in his Memorandum. (A-80).

However, not only was that case decided long before the cases of *New York Life Insurance Company v. Head, id., Aetna Life Insurance Co. v. Dunken, id., Hewitt v. Dredge, id., and Merchants State Bank v. Sunset Orchard Land Company, id.*, but it also involved a contract which was void under a statute of the State where the contract was made, namely Illinois.

There is no statute in the State of Minnesota which forbids the contracts entered into by the Respondent and the Appellant.

The retainer agreements signed by the Respondent are valid, enforceable Minnesota contracts, and should be enforced under Minnesota contract law.

CONCLUSION

It is interesting to note that no one, at any time, has alleged that I failed to keep my end of the bargain. That I failed to perform skillfully or effectively. That I failed in any way to recover the highest possible award for the Respondent.

The only complaint now, after all the benefits have been reaped from my skill, is that the Respondent does not want to pay me what I have rightly earned, and what is justly due to me.

Attorneys practice law in accordance with objective laws and decided cases. They do not, and cannot, practice law in accordance with subjective ideas of what public policy should be.

To decide now, after I have done all that could possibly have been asked of me, that I should not be paid for my services is not only inherently unfair; it is also inherently unjust. And it's really justice that we are striving for, is it not?

The trial court's judgment should be reversed, and the Appellant should be granted judgment for 15% of all weekly benefit payments of $243.92 paid to the Respondent from, and after, June 24, 1980, with interest. 15% of $243.92 amounts to $36.59. The Appellant should also be granted judgment for 15% of any lump sum settlement that the Respondent may make with the insurance company with regard to his compensation claim.

Respectfully submitted,

/s/ William C. Hoffman
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STATE OF MINNESOTA
IN SUPREME COURT

William C. Hoffman,

Petitioner,

vs.

David S. Henderson,

Respondent.

PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS

APPELLATE COURT CASE NUMBER: C6-84-464

DATE OF FILING OF COURT OF APPEALS DECISION: OCTOBER 2, 1984

TO: The Supreme Court of the State of Minnesota:

The Petitioner, William C. Hoffman, requests Supreme Court review of the above-entitled decision of the Court of Appeals upon the following grounds:

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Respondent, a Minnesota resident, while working in Alaska, sustained a work related injury on February 7, 1977.

On July 13, 1978, the Respondent hired the Petitioner, a Minnesota attorney, to handle his Alaskan workmen's compenastion case. The Respondent signed a retainer agreement in the Petitioner's office which provided that the Respondent would receive 3/4 of any recovery and the Petitioner would receive 1/4.

On February 20, 1979, the Respondent signed a supplement to retainer agreement in the Petitioner's office which provided the same 3/4-1/4 recovery formula.

All work pertaining to the case, other than the hearing which lasted about one hour, was done by the Petitioner in Minnesota.

A recovery was made on behalf of the Respondent, but the Decision and Order of the Alaska Workmen's Compensation Board provided that the Petitioner would receive 1/4 of the first $1,000.00 recovered and 10% of the remainder of the recovery.

The Respondent paid the Petitioner in accordance with the retainer and supplement to retainer agreements until June 24, 1980, and thereafter refused to honor the terms of the agreements.

The Petitioner sued the Respondent in Ramsey County District Court for recovery of his fees, and the Respondent counterclaimed for recovery of the amounts he had already paid.

The District Court, Honorable Bertrand Poritsky, found in the Respondent's favor on the basis of public policy.

The Petitioner appealed to the Court of Appeals of the State of Minnesota, and the Court found for the Respondent on the basis that Alaska's laws govern the agreements.

STATEMENT OF LEGAL ISSUES AND THEIR RESOLUTION BY THE COURT OF APPEALS

1. Are retainer agreements between a Minnesota resident and a Minnesota attorney which are prepared, executed and delivered in Minnesota, with all amounts payable thereunder to be paid in Minnesota, which relate to an Alaskan workmen's compensation claim, governed by Minnesota's contract laws or by Alaska's workmen's compensation laws?

   The Court of Appeals held that Alaska's workmen's compensation laws govern the agreements.

2. Who is entitled to judgment in this case, and in what amount?

   The Court of Appeals held that the Respondent should recover the amounts he had previously paid the Petitioner.

ARGUMENT

The Petitioner contends that Article 1, Section 10 of the United States Constitution, the Fourteenth Amendment, Section 1 of the United States Constitution, Article 1, Section 11 of the Bill of Rights of the Minnesota State Constitution and the cases decided by the United States Supreme Court as well as the Minnesota Supreme Court clearly establish that the retainer agreements are Minnesota contracts, governed by Minnesota's contract

laws, that Alaska's laws can have no extra-territorial effect, and to apply Alaska's laws to the agreements violates both the United States Constitution and the Minnesota State Constitution.

The Petitioner further contends that the Court of Appeals incorrectly applied the five factors enumerated by Professor Leflar in his *Choice Influencing Considerations in Conflicts Law*, 41 N.Y.U.L.R. 267, 282 (1966) and accepted by the Minnesota Supreme Court in *Schneider v. Nichols*, 158 N.W.2d 254, 258 (1968) and *Milkovich v. Saari*, 203 N.W.2d 408, 413 (1973).

Professor Leflar states that the first factor, predictability of results, is of primary importance in contract cases and cites examples of application of the factor. *Id.*, 317, 318, 319, 320. The Court of Appeals, instead of treating this case as a contract case, treated it as a tort case, and applied the five factors, and the principles enumerated in the cases which they cited, to this case as if it was a tort case.

In addition, the factors enumerated by Professor Leflar cannot override the United States Constitution, which is the supreme law of the land, nor the Minnesota State Constitution.

The Court of Appeals failed to address the applicability of the Constitutional provisions of the United States Constitution and the Minnesota State Constitution to this case, and as a result, arrived at an erroneous decision.

CONCLUSION

This case is governed by the provisions of the United States Constitution and the Minnesota State Constitution, and the cases decided thereunder, and they clearly establish that the retainer agreements are Minnesota contracts governed by Minnesota's contract laws. Not to review, and overrule, the decision of the Court of Appeals would result in the affirmation of an erroneous decision.

For these reasons, the Petitioner seeks an Order granting review of the decision of the Court of Appeals.

DATED: October 29, 1984.

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